

ORIGINAL

(S E R V E D)
(January 8, 2001)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 00-05

WORLD LINE SHIPPING, INC. AND
SAEID B. MARALAN (AKA SAM BUSTANI)

ORDER TO SHOW CAUSE

Respondents violated sections 8, 19(a), and 19(b) of the Shipping Act of 1984, and cease and desist orders issued by the Commission in a previous proceeding, by serving as a non-vessel-operating common carrier without a public tariff, license, or proof of financial responsibility, and by using unregistered, fictitious business names.

Sam Bustani, for himself and World Line Shipping, Inc.

Vern **H. Hill** and **Heather M. Burns**, for the Bureau of Enforcement.

REPORT AND ORDER

BY THE COMMISSION: (**Harold J. Creel, Jr., Chairman; Joseph Brennan, Antony M. Merck, John A. Moran, and Delmond J.H. Won, Commissioners**)

On April 20, 2000, the Commission, by Order to Show Cause, initiated a proceeding against Respondents World Line Shipping, Inc. and Saeid B. Maralan (AKA Sam Bustani). The Order was issued to determine whether World Line Shipping and Bustani, its president and owner, had violated sections 8, 19(a), and 19(b) of the Shipping Act of 1984 ("Shipping Act"), 46 U.S.C. app. §§ 1707,

1718 (a), and 1718(b). The Order further sought to determine whether Respondents had violated several cease and desist orders issued by the Commission in Saeid B. Maralan (AKA Sam Bustani), World Line Shippins, Inc. et al. - Possible Violations of Sections 8(a) (1), 10(b) (1), 19(a) and 23(a) of the Shipping Act of 1984, 28 S.R.R. 1244 (1999). The Order was based on Respondents' alleged activities serving as a non-vessel-operating common carrier ("NVOCC") without a public tariff, license, or proof of financial responsibility. The Order also sought to ascertain, if Respondents were found to have violated the Act, whether civil penalties should be assessed against them, and whether cease and desist orders should be issued against them.

The Order established a procedural schedule in which Respondents were directed to file affidavits of fact and memoranda of law addressing the allegations raised in the Order by May 10, 2000. The Commission's Bureau of Enforcement ("BOE") was made a party to the proceeding, and was directed to file reply affidavits of fact and memoranda of law by May 30, 2000. Respondents were instructed that they could file rebuttal affidavits of fact and memoranda of law by June 12, 2000. Respondents were given notice of the proceeding by service of the Order to Show Cause on them, as well as by publication of notice of the Order in the Federal Register. 65 Fed. Reg. 24697 (Thursday, April 27, 2000).

On May 24, 2000, fourteen days after their pleadings were due, Respondents filed a request for an extension of time, averring that because Respondents "have to prepare papers for different courts (District and FMC) . . . we request for a brief extension to provide affidavits of fact and memoranda."¹ On May 25, BOE filed a reply to the request, in which it argued that the request should be denied. BOE averred that Respondents were aware of the deadline for filing their pleadings, and had failed to meet that deadline. BOE alleged that Respondents in a previous Commission proceeding had "consistently failed to follow Commission procedures and sought extensions of time for unwarranted reasons." BOE urged the Commission to deny the request, which it characterized as a 'means to delay the proceeding.'

On May 26, 2000, pursuant to authority delegated at 46 C.F.R.

¹ On May 3, 2000, the Commission filed a Complaint for Injunctive Relief with the United States District Court for the Central District of California, seeking a temporary restraining order and a preliminary injunction against Respondents, based upon the allegations in the Order to Show Cause. 46 U.S.C. app. § 1710 (h)(1) (FMC may seek injunction " [i]n connection with any investigation conducted under" section 11 of the Shipping Act). On May 11, 2000, the district court issued a temporary restraining order enjoining World Line Shipping and Sam Bustani from operating as an NVOCC without a license, bond, or published tariff. After a hearing, on June 12, 2000, the district court issued a preliminary injunction, as well as findings of fact and conclusions of law. Federal Maritime Comm'n v. World Line Shipping, et al., 28 S.R.R. 1464. The injunction provided that it was to last until ten days after the Commission issued its order in this proceeding determining whether Respondents had violated the Shipping Act.

§ 501.24(d) (1) (1999) to "extend or reduce the time . . . to file documents . . . in docketed proceedings," the Commission's Secretary denied Respondents' request for an extension of time. The Secretary ruled that Respondents provided no basis for an extension, and further noted that a request for an extension is required to be made at least five days prior to the scheduled date for filing, under Rule 102, 46 C.F.R. § 502.102 (1999). Respondents' request was filed fourteen days after the date their pleadings were due.

DISCUSSION

On May 30, 2000, BOE filed its Memorandum of Law and Declarations of Fact. Respondents did not file any pleadings after their request for an extension of time was denied.

In its Memorandum of Law, BOE notes that the factual allegations made in the Order to Show Cause have not been contested, and that they should therefore be accepted into the record. BOE argues that the Declarations of Fact it supplied with its Memorandum of Law are also uncontested, and should be accepted into the record as well. BOE Memorandum at 3-4. Upon review of the record in this case, the Commission has determined to accept and adopt as factual findings relevant portions (set forth below) of BOE's Declarations of Fact, and the factual allegations in the Order to Show Cause. See Adair v. Penn-Nordic Lines, 26 S.R.R. 11,

15 (ALJ 1991) ("It is a familiar rule of evidence that a party having control of information bearing upon a disputed issue may be given the burden of bringing it forward and suffering an adverse inference from failure to do so"); Commonwealth of Puerto Rico v. Federal Maritime Comm'n, 468 F.2d 872, 880 (D.C. Cir. 1972) (burden may be placed on a regulated entity to bring forward information bearing on its operations).

A. Findings of fact

World Line Shipping, located at 20003 Rancho Way, Rancho Dominguez, California, 90220, is a California corporation incorporated on or about April 29, 1998. Bustani is the president and owner of World Line Shipping, and controls and manages its operations on a day-to-day basis. World Line Shipping was provisionally licensed as an ocean transportation intermediary ("OTI")² on May 1, 1999, and maintained a publicly available tariff until it was canceled effective October 21, 1999. World Line Shipping maintained a surety bond, number 9841513, in the amount of \$75,000, with Washington International Insurance Company until it was canceled effective October 21, 1999. The Commission revoked World Line Shipping's OTI license effective October 21, 1999, for failure to maintain adequate proof of financial responsibility.

² The term 'ocean transportation intermediary' includes Nvoccs, as well as freight forwarders. See 46 U.S.C. app. § 1702(17).

On December 16, 1999, the Commission issued a final order in Saeid B. Maralan (AKA Sam Bustani), World Line Shipping, Inc. et al. - Possible Violations of Sections 8(a) (1), 10(b) (1), 19(a) and 23(a) of the Shipping Act of 1984, 28 S.R.R. 1244 (1999) ("Docket No. 98-19"). In that proceeding, the Commission imposed a \$100,000 fine on World Line Shipping for violations of various sections of the Shipping Act, and ordered World Line Shipping and Bustani to cease and desist from operating as an NVOCC without a filed tariff and bond, and to cease and desist from using any business names other than World Line Shipping unless such other names were registered as d/b/a names with the State of California.

The record shows that despite not having a license, a bond, or a public tariff, Respondents operated as an NVOCC by contracting on seven occasions from October 21, 1999 to April 9, 2000 to obtain ocean transportation in the foreign commerce of the United States.

Respondents contracted for one shipment with Maersk on October 21, 1999, and three shipments with Maersk on March 8, 2000. Respondents used the fictitious name International Shipping and Crating on the October 21, 1999 shipment and two of the March 8, 2000 shipments, and used the name World Line Shipping on the remaining March 8, 2000 shipment. All four of these shipments were bound for Bridgetown, Barbados, West Indies.

On December 6, 1999, Respondents contracted for a shipment on

Cho Yang via a consolidator called Conterm, using the name World Line Shipping. This shipment was bound for Rotterdam.

On January 25, 2000, Respondents contracted for a shipment with Zim, bound for Limassol, Cyprus, using the name World Line Shipping. On April 9, 2000, Respondents contracted for another shipment with Zim, bound for Singapore, using the fictitious name Worldwide Cargo Express.

B. Conclusions of law

1. Shipping Act violations

Section 8 of the Shipping Act, 46 U.S.C. app. § 1707, states that no common carrier may provide service in United States foreign trades unless the carrier has a tariff available to the public in an automated tariff system showing all of its rates, charges and practices. Section 19(a) of the Act, 46 U.S.C. app. § 1718(a), provides that no person may act as an OTI unless that person holds a license issued by the Commission. Section 19(b) of the Act, 46 U.S.C. app. § 1718(b), provides that no person may act as an OTI unless that person furnishes to the Commission a bond, proof of insurance or other surety, to demonstrate the financial responsibility of the intermediary to pay any judgment for damages arising from its transportation-related activities.

BOE argues that the facts as set forth above show that Respondents operated as an NVOCC in violation of these sections of

the Act. BOE found evidence of seven shipments from October 21, 1999 to April 9, 2000. In all of these shipments, Respondents contracted with common carriers to obtain ocean transportation to foreign destinations for their customers. Respondents listed either World Line Shipping or an alias as the shipper on the ocean common carrier bills of lading. Respondents accepted responsibility for the shipments and paid the ocean common carrier.

As made clear in the Order to Show Cause, Respondents have not had a public tariff, a license, or proof of financial responsibility since October 21, 1999. Order to Show Cause at 3. Thus, at the time of the seven shipments described above, Respondents did not have a license, a public tariff, or a bond. The Commission finds that Respondents violated sections 8, 19(a), and 19(b) of the Act on seven distinct occasions by providing NVOCC services on the seven shipments detailed above.

2. Violations of cease and desist orders

BOE avers that Respondents violated the cease and desist order in Docket No. 98-19, which forbade them from operating as an NVOCC without a tariff and bond on file with the Commission. BOE is correct that the order in Docket No. 98-19 forbids Respondents from operating as an NVOCC without having a filed tariff and bond, and that it prohibits World Line Shipping from operating as an ocean freight forwarder without a license and surety bond. The Ocean

Shipping Reform Act of 1998, Pub. L. No. 105-258, 112 Stat. 1902 ("OSRA"), passed after the commencement of Docket No. 98-19 and effective before this Show Cause proceeding was initiated, extended the licensing requirement to NVOCCs. See 46 U.S.C. app. § 1718(a) ("[n]o person in the United States may act as an ocean transportation intermediary unless that person holds a license issued by the Commission"). OSRA also amended the Shipping Act to require tariffs to be published, rather than filed with the Commission. See 46 U.S.C. app. § 1707(a)(1) (a common carrier "shall keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices"); former 46 U.S.C. app. § 1707(a)(1) (1997) (common carriers "shall file [tariffs] with the Commission"). Based on the portions of the cease and desist orders in Docket No. 98-19 that are consistent with the amended Shipping Act, the Commission finds that Respondents have violated the cease and desist orders charging them not to operate without proof of financial responsibility on file with the Commission. The order to cease and desist from operating without a filed tariff no longer applies because the passage of OSRA has eliminated the filing requirement for tariffs - now they must be published. The order to cease and desist from operating as a freight forwarder without a license does not appear to apply to this proceeding because there

is no evidence that Respondents are operating as a freight forwarder; the seven shipments in question involve Respondents' activities as an NVOCC. The Commission finds that Respondents violated the cease and desist order in Docket No. 98-19 on seven distinct occasions by operating as an NVOCC without proof of financial responsibility on the seven shipments detailed above.

BOE also alleges that Respondents used several fictitious business names, in further violation of the cease and desist orders in Docket No. 98-19. In that proceeding, the Commission stated that "Bustani is ordered to cease and desist from using any name other than World Line Shipping, Inc. when operating as an NVOCC unless and until he registers other d/b/a names in the World Line tariff and with the State of California." Docket No. 98-19, 28 S.R.R. at 1250. The facts of this proceeding show that Respondents used several other aliases, and BOE provided evidence that none of them was registered with the State of California. The Commission rules that Respondents violated the cease and desist orders in Docket No. 98-19 on four of the seven shipments detailed above, by using fictitious business names not registered with the State of California.

C. Penalties

BOE argues that the Commission should issue, as proposed in the Order to Show Cause, a cease and desist order commanding

Respondents not to operate without a public tariff or a bond. BOE also avers that the Commission should issue a cease and desist order to address whether Respondents have been operating without a license. The issue whether Respondents violated the Act by operating without a license was raised in the Order to Show Cause, but whether a cease and desist order should issue to forbid future operation without a license was not. The Commission has determined to issue orders to cease and desist from operating without a public tariff and bond. Whether to issue a cease and desist order addressing Respondents' operation without a license will not be addressed by the Commission in this proceeding.

BOE also alleges that, per the terms of the Order to Show Cause, the Commission should refer the proceeding to an administrative law judge for an assessment of civil penalties. See Order to Show Cause at 5-6. The Commission will accept this recommendation, and directs that the proceeding be assigned to an administrative law judge for an assessment of civil penalties.

CONCLUSION

The Commission finds that Respondents violated sections 8, 19(a), and 19(b) of the Shipping Act of 1984 on seven distinct occasions by operating as an NVOCC without a published tariff, without a license, and without a bond or other proof of financial responsibility. The Commission finds that Respondents violated the

cease and desist orders in Docket No. 98-19 on seven occasions by operating as an NVOCC without proof of financial responsibility, and on four occasions by using fictitious business names not registered with the State of California.

The Commission has determined to issue a cease and desist order commanding Respondents to cease and desist from operating as an Nvocc without a public tariff or proof of financial responsibility, and is referring the proceeding to an administrative law judge for an assessment of civil penalties.

THEREFORE, IT IS ORDERED, That Respondents are found to have violated section 8 of the Shipping Act of 1984 on seven occasions by operating as an NVOCC without a public tariff.

IT IS FURTHER ORDERED, That Respondents are found to have violated section 19(a) of the Shipping Act of 1984 on seven occasions by operating as an NVOCC without a license.

IT IS FURTHER ORDERED, That Respondents are found to have violated section 19(b) of the Shipping Act of 1984 on seven occasions by operating as an NVOCC without proof of financial responsibility.

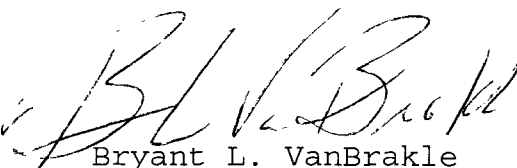
IT IS FURTHER ORDERED, That Respondents are found to have violated a Commission-issued cease and desist order on seven occasions by operating as an NVOCC without proof of financial responsibility.

IT IS FURTHER ORDERED, That Respondents are found to have violated a Commission-issued cease and desist order on four occasions by operating as an NVOCC under fictitious business names not registered in the State of California.

IT IS FURTHER ORDERED, That Respondents are ordered to cease and desist from providing or holding themselves out to provide transportation as an OTI between the United States and a foreign country unless and until Respondents obtain a publicly available tariff and file proof of financial responsibility with the Commission.

FINALLY, IT IS ORDERED, That the proceeding is referred to the Office of Administrative Law Judges for the assessment of civil penalties for Respondents' violations of the Shipping Act of 1984 and Respondents' violations of Commission-issued cease and desist orders.

By the Commission.


Bryant L. VanBrakle
Secretary